

TRACPLUS SERVICE TERMS AND CONDITIONS

Last updated 23 November 2022

Lease version.

IMPORTANT NOTICE: PLEASE CAREFULLY READ THE FOLLOWING TERMS, CONDITIONS, AGREEMENTS, POLICIES AND NOTICES THAT GOVERN ALL DEALINGS BETWEEN YOU AND TRACPLUS GLOBAL LIMITED, AFFECT YOUR LEGAL RIGHTS AND ARE BINDING ON YOU TO THE FULLEST EXTENT PERMITTED BY LAW.

1. BACKGROUND

- 1.1 These terms and conditions, together with our Privacy Policy apply when we, TracPlus Global Limited, agree to provide access to you for use of our TracPlus tracking and communications solution, an internet-based service that allows you to manage and monitor certain assets and store that data centrally. As part of the TracPlus Service, we may also sell or lease you tracking and communications equipment and arrange airtime for you (to allow the equipment to operate correctly), and we may provide you with our TracPlus application software. If you do not agree to these terms and conditions, you are not authorised to access and/or use the TracPlus Service or any part of it, and you must immediately stop doing so.

2. DEFINITIONS AND INTERPRETATION

- 2.1 Words defined in the Contract Details will apply in these Service Terms.
- 2.2 References in these Service Terms to "TracPlus" or "we" or "us" or "our" are to TracPlus Global Limited and where the context allows, includes its associated and related companies (as defined in the Companies Act 1993 (NZ)). You have told us your legal name and your contact details which are recorded in the Contract Details. You confirm these are correct and that if these change you will advise us as soon as possible. References to "you" or "your" refers to you, the Customer.
- 2.3 In these Service Terms, the following definitions apply:
- "Agreement"** means the contract constituted by the Contract Details and its schedules including these Service Terms.
- "Associated Services"** means any implementation, consulting, support, or other services provided by us to you in connection with your access to and use of the TracPlus Solution.
- "Contract Details"** means the "Customer Contract" to which these Service Terms are attached as a schedule.
- "Customer Data"** means:
- all data, content, and information (including Personal Information) owned, held, used or created by you, or your personnel, that is stored using or inputted into, the TracPlus Solution; and all tracking data that the Customer receives as an output from the TracPlus Solution, but only to the extent such tracking data arises solely from the Customer's own data, content and

information inputted into the TracPlus Solution, and not from the data or outputs of any other user of the TracPlus Solution.

"Data Privacy Laws" means the data protection and privacy laws applicable to the processing of Personal Information that we are committed to comply with, including:

- the Privacy Act 2020 (New Zealand);
- where we are dealing with persons based in the European Union, the GDPR; and
- any other applicable privacy laws.

"Equipment" means all equipment, including devices, hardware and connections involved in the supply of the TracPlus Solution and/or Associated Services that are supplied to you (whether by sale or lease) by or on behalf of TracPlus (as specified in your Plan).

"Equipment Lease Fees" means any lease fees for the Equipment specified in your Plan.

"Fair Use Policy" means that the use of the TracPlus Solution must be fair, reasonable, and not excessive as determined by us (acting reasonably) and by reference to usage by other users, and usage will be considered excessive and unreasonable where it materially exceeds the average and/or estimated use patterns over all users across the TracPlus Solution.

"Fees" means the fees payable as specified in the Contract Details or under these Service Terms including activation fees, Equipment Lease Fees airtime usage fees, fees for messaging, alerts, tracking, voice communications, data, support, user codes, software modification, device fees, late payment fees, implementation fees, third party charges, fees for the use of third-party maps, and training fees.

"GDPR" means the General Data Protection Regulation of the European Union.

"Intellectual Property Rights" means all rights in the TracPlus Service and in our Website, together with all intellectual property relating to third party maps, including rights to patents, trademarks, service marks, inventions, copyright, know how whether or not registered, and any related enhancement or modifications, but excludes any Customer Data.

"Minimum Period" means any minimum period for which you have agreed to pay for the TracPlus Service as specified in the Contract Details.

"NZ" means New Zealand.

"Objectionable" includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

"Personnel" includes officers, employees, contractors, and agents, but a reference to your personnel does not include us or any of our officers, employees, contractors or agents.

"Personal Information" means information about an identifiable individual.

"Privacy Policy" means the TracPlus privacy policy together with our cookie policy and, if applicable, GDPR addendum, each of which can be accessed at www.tracplus.com/termsandconditions.

TRACPLUS SERVICE TERMS AND CONDITIONS

“**Term**” means the Term or Minimum Period specified in the Contract Detail as it may be extended in accordance with these Service Terms.

“**TracPlus Service**” means the TracPlus Solution, together with any Equipment, Software, Associated Services and/or data supplied to you in connection with your access to and use of the TracPlus Solution.

“**TracPlus Solution**” means the TracPlus tracking and communications solution that you have subscribed for, as specified in this Agreement.

“**Software**” means any application software made available to you by TracPlus in connection with your access to and use of the TracPlus Solution.

“**Service Terms**” means these TracPlus Service terms and conditions (as amended from time to time).

“**Unlimited Data Plan**” means any “unlimited data” airtime TracPlus plan which does not limit the number of transmissions that you may send through the TracPlus Solution each month (other than as provided for in these terms and conditions).

“**Website**” means the TracPlus website at www.tracplus.com.

The terms “perfected” and “security interest” have the meanings given to them under, or in the context of, the Personal Properties Securities Act 1999.

3. ACCESS AND USE OF TRACPLUS

- 3.1 We agree to provide, and you agree to accept, setup and ongoing access to the TracPlus Service in accordance with the terms of this Agreement.
- 3.2 You acknowledge that:
 - (a) You are responsible for obtaining all computer equipment, hardware, communications channels and links, and internet or other access you require to access and use the TracPlus Service (other than where we agree to provide Equipment and/or Software to you, or to arrange for airtime for you), and for all charges in relation to those things.
 - (b) Your selection of hardware, other equipment and software, communication channels, plans and links, and the quality of the installation and environment that you arrange, will affect your access to the TracPlus Service, the performance of the TracPlus Service, and the quality of the data you receive as an output from the TracPlus Solution. For example, if transmission of data is affected by location of your assets, the data you receive will only be the data that we have received from your assets. Suitability of your selections is your sole responsibility and risk, and we shall not be liable for any loss or damage suffered by you because of your selections and quality of installation arranged.
 - (c) You must follow all the guidelines, user guides, instructions, and manuals we give you for use of the TracPlus Service. We are not responsible for any loss or damage as a direct or indirect result of a failure to follow any such guidelines.

- (d) You are responsible for ensuring that all Customer Data that you input or store in the TracPlus Solution is, at all times, accurate, complete and up to date, and you acknowledge that the accuracy and reliability of the TracPlus Service (including any data you receive as an output from the TracPlus Solution) is entirely reliant on such matters.
- (e) You must comply with any limitations or restrictions (including as to user numbers) identified in this Agreement.

3.3 You must always use the TracPlus Service in compliance with all relevant laws and regulations in your areas of use including without limitation applicable laws and regulations relating to the use of any of them for aeronautical, marine, military or other purposes that you may use the TracPlus Service in relation to specifically. For the avoidance of doubt, if you elect to install or otherwise use equipment (including any Equipment) that is not certified or approved for the relevant area of use, you are responsible for ascertaining whether such equipment is suitable for that purpose and that it is installed and used in compliance with all relevant laws and regulations of all relevant authorities in the relevant area of use.

3.4 You confirm that you understand that the TracPlus Service is intended for business use and that you will be using the TracPlus Service for the purposes of a business. To the maximum extent permissible by law, the provisions of the New Zealand Consumer Guarantees Act 1993 (NZ) therefore do not apply to your use of the TracPlus Service, and you agree it is fair and reasonable that we and you are bound by this clause.

- 3.5 If you have subscribed for an Unlimited Data Plan, you acknowledge and agree that:
- (a) the unlimited transmissions apply to messages only, and not to videos or images;
 - (b) despite the unlimited nature of the Unlimited Data Plan, your use of the TracPlus Solution is subject to the Fair Use Policy.

4. OUTSOURCING

- 4.1 If you are notified by us at any time throughout the Term on no less than 30 days written notice, that any part of the TracPlus Service (e.g emergency response services) will be provided by a third-party service provider (“Outsourced Service”), you acknowledge and agree:
- (a) that the Outsourced Service will be supplied to you directly by the relevant third-party service provider pursuant to its terms and conditions of service and privacy policy (“Applicable Terms”), and not this Agreement, except as specified otherwise in this clause 4;
 - (b) despite the provision of the Outsourced Service directly to you by the relevant third-party service provider, the Fees charged by TracPlus for the Outsourced Service shall continue to be payable by you to TracPlus (on the terms of this Agreement), who shall collect such Fees on behalf of the third party service provider. However, you acknowledge and agree that such Fees are payable

TRACPLUS SERVICE TERMS AND CONDITIONS

for the standard Outsourced Service only (as contracted for under this Agreement) and any additional fees or charges you incur in connection with the Outsourced Service (for any reason, including as a consequence of any TracPlus Services received under this Agreement), such additional fees and/or charges will be payable by you direct to the third party service provider (pursuant to its terms and conditions of service). TracPlus shall not be responsible for or liable to you in connection with any such additional fees or charges;

- (c) to accept the Applicable Terms and enter into an agreement with the relevant third party service provider if you wish to access and use the Outsourced Service;
- (d) on the date that any part of the TracPlus Service becomes an Outsourced Service, this Agreement shall terminate in respect of such service, other than as specified in (b) above in respect of the payment of Fees; and
- (e) that we will have no responsibility or liability for, or in connection with, the Outsourced Service and that your contract for such service will be directly with the relevant third-party service provider.

4.2 If, following notification from us that a part of the TracPlus Service is to become an Outsourced Service, you no longer wish to receive the relevant service, you must notify us (in writing) within 10 working days of the date of such notice, advising us of such election and we will immediately terminate this Agreement in respect of such service (from the date of your notice).

4.3 Without limiting any other provisions of this Agreement, maps, images and supporting files used in or relating to the TracPlus Service may not be copied, modified or used for any purpose at all other than for the purposes of using the TracPlus Service. The dataset used for labels for the Geographx maps is a set of delimited text tables that have been derived from the New Zealand Geographic Place Names database, sourced from Land Information New Zealand. Users of this data are advised that New Zealand Place Names were captured for the labelling of text on the 1:50 000 Map Series. The co-ordinates were digitised at the bottom left corner of the text labels that appear on the printed map. The coordinates are not a GPS position for the geographic location of the feature. Neither we nor Land Information New Zealand accepts any responsibility or liability for problems that users encounter due to using this data or the accuracy of its contents.

5. SOFTWARE LICENCE; SUPPORT

5.1 As part of the TracPlus Service, we may provide you with access to Software to use in conjunction with the TracPlus Solution. We retain ownership of that Software at all times and you only receive a licence to use the Software in conjunction with the TracPlus Solution and only while you use the TracPlus Service pursuant to and during the term of this Agreement and pay the Fees. You must not:

- (a) sub-licence or otherwise transfer in whole or in part the Software to anyone else;

- (b) copy, modify, alter, translate, vary, decompile, disassemble, or reassemble the Software in any way; or
- (c) use the Software for any other purpose other than in conjunction with your use of the TracPlus Solution or use the Software to resell or otherwise provide the TracPlus Service in any way to any third party.

6. ASSOCIATED SERVICES

- 6.1 As an Associated Service, we will provide you with support for your use of the TracPlus Solution as follows:
- (a) We will provide you with reasonable telephone or email advice (at our discretion) to assist in your use of the TracPlus Solution and may charge Fees for such support.
 - (b) We may update or upgrade any part of the TracPlus Service (including the Software) with new versions or updates at our discretion. If we require you to, you must install new updates or upgrades in accordance with our instructions and you acknowledge that if you do not do so, your use of the TracPlus Solution may be impaired or suspended.
 - (c) We may charge you additional Fees at our discretion with advance notice to you, at our then current hourly rates for support that is required to be provided as a result of:
 - i. you using equipment not supplied by us;
 - ii. you using new equipment (including any Equipment supplied by or on our behalf);
 - iii. you requiring additional configuration or additional access to the TracPlus Solution;
 - iv. any unauthorised access or use, attempted modification, or alteration you or your Personnel make in any way to the TracPlus Service; or
 - v. you failing to install any update or upgrade to any Software.
 - (d) We may also charge you, at our discretion with advance notice to you, for our reasonable travel and accommodation expenses we incur in visiting any location nominated by you for the purpose of providing support, and where we are charging a Fee under clause 6(c) above, this may include our travelling time.

7. TRACPLUS SERVICE; WARRANTIES

- 7.1 We warrant that:
- (a) we have the power and authority to provide the TracPlus Service, provided it is used in accordance with this Agreement.
 - (b) to the best of our knowledge, the TracPlus Solution and our database configuration does not infringe any patent, copyright, trade secret or other proprietary right of any third party.
 - (c) when we provide Associated Services to you, we will do so to the standard of care and skill reasonably expected in the provision of such services.
 - (d) we will use reasonable commercial endeavours to ensure that:

TRACPLUS SERVICE TERMS AND CONDITIONS

- i. the TracPlus Solution is available 24 hours a day, 7 days a week, excepting outages for planned updates, new versions, updates and upgrades and routine maintenance; but we do not guarantee this; and
- ii. the TracPlus server(s) will have an uptime availability of 99.9% excluding scheduled maintenance.

You acknowledge that the availability of the internet, your communication links and your equipment are integral to the availability of the TracPlus Solution and will affect your use of it, including your access to the server(s), provided that we shall under no circumstances be responsible for any loss or damage incurred by you or any other person as a result of outages or failures of any aspect of the tracking and communication services which have resulted from any of your (or your Personnel's) acts or omissions or are beyond our reasonable control (including, without limitation, an ISP fault, hardware manufacturing fault, inadequate or inaccurate installation or maintenance, or inadequate, inaccurate or faulty Customer Data or data provided by a third party tracking service provider).

- 7.2 If we have agreed to provide a distress monitoring and notification service to you (other than as an Outsourced Service pursuant to clause 4), we will use reasonable endeavours to contact you in the way we have agreed, but we do not guarantee that we will be able to do so.
- 7.3 You must notify us immediately if any of the contact numbers you have provided us with change or are unavailable or unattended by English speaking personnel for any reason. We are not responsible for any loss or damage incurred by you as a result of any failure to provide an alert which results from your failure to notify us as required by this clause, or if we are otherwise unable to provide an alert after using reasonable endeavours to do so.
- 7.4 If we have agreed to provide an automatic monitoring and notification service to you, we will use reasonable endeavours to contact you in the way we have agreed, but we do not guarantee that we will be able to do so. You must notify us immediately if any of the contact numbers you have provided us with change or are unavailable or unattended by English speaking personnel for any reason. We are not responsible for any loss or damage incurred by you as a result of any failure to provide an alert which results from your failure to notify us as required by this clause, or if we are otherwise unable to provide an alert after using reasonable endeavours to do so.
- 7.5 We do not warrant that the format of any data you receive as an output of the TracPlus Solution will be compatible with any software or that such data will be error free.
- 7.6 If you have elected to use the "Notify Only" option for any emergency monitoring and notification service, you are responsible for ensuring that cell phone or page numbers nominated for notification purposes are valid and monitored at all times; you acknowledge that we will take no further action beyond the attempted delivery of notification messages to your nominated contacts.

7.7 TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE WARRANTIES EXPLICITLY SET OUT IN THIS CLAUSE 7, ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. WE MAKE NO REPRESENTATION CONCERNING THE QUALITY OF THE EQUIPMENT OR THE TRACPLUS SERVICE AND DO NOT PROMISE THAT ANY PART OF THE TRACPLUS SERVICE WILL BE SECURE, FREE OF VIRUSES OR OTHER HARMFUL CODE, UNINTERRUPTED OR ERROR FREE. TO THE EXTENT WARRANTIES CANNOT BE EXCLUDED, LIABILITY FOR THEM IS LIMITED AS SET OUT IN CLAUSE 13.

8. LEASED EQUIPMENT

- 8.1 This clause 8 applies where we lease Equipment (including third party Equipment) to you.
- 8.2 We will deliver (or procure the delivery of) the Equipment to you (at your cost) at an agreed delivery location. Any dates provided to you for the time of delivery of Equipment are estimates only and not commitments. We will not be bound by, or liable for a failure to comply with, any such estimate;
- 8.3 Risk in the Equipment will pass to you upon delivery of such Equipment to you. You must obtain and maintain appropriate insurance in respect of the Equipment from the date on which risk in the Equipment passes to you. You:
 - (a) are responsible for the safe storage, use and care of all Equipment. You must use your best endeavours to ensure that, during the lease period, the Equipment is protected from loss, theft and damage;
 - (b) should any Equipment be broken or damaged or become unsafe to use during the Term you will:
 - i. immediately notify us and cease to use the relevant Equipment; and
 - ii. ensure that all reasonable steps are taken to prevent any further damage to the relevant Equipment.
 - (c) must not attempt to repair the relevant Equipment. We will, at our option, either repair the relevant Equipment or replace such Equipment, as soon as practicable following receipt of a notice under clause 8.3(b);
 - (d) if, during the Term, any Equipment is stolen, lost, or damaged as a result of misuse or abuse, or non-warranty accidental damage, you must pay for the replacement of such Equipment (as notified by us); and
 - (e) you must continue to pay all applicable Fees while any Equipment is getting repaired or replaced.
- 8.4 During the Term:
 - (a) we will not interfere with your use of the Equipment, nor allow anyone else to do so.
 - (b) We will endeavour to give you the benefit of any manufacturer's warranty that we receive as the lessor of the Equipment, to the extent that such warranty is available at the time of delivery of the Equipment to you. You must follow any specific instructions we give you in relation to that

TRACPLUS SERVICE TERMS AND CONDITIONS

- warranty. This may include returning Equipment to us at your cost (including shipping costs) if it fails to perform in accordance with that warranty.
- (c) we make no representation or warranty concerning the condition or performance of the Equipment.
 - (d) where legislation or rule of law implies into this Agreement a condition or warranty regarding the Equipment that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in this Agreement. However, our liability for any breach of that condition or warranty, or any express warranty in this Agreement relating to the Equipment is limited to the repair or resupply (at our option) of the relevant Equipment.
 - (e) In order to receive the benefit of any warranties, you must follow all storage, installation, maintenance and user guides related to installation and use of the TracPlus Service. You acknowledge that in relation to third party Equipment, the tampering, removal or damaging of any “warranty void if removed” label or similar shall render all warranties relating to that Equipment void.
- 8.5 Notwithstanding that risk in the Equipment passes to you in accordance with clause 8.3, title and ownership will at all times remain with us. You must not offer, sell, assign, transfer, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with, the Equipment in any way, except as expressly provided for in this Agreement.
- 8.6 To further secure our interest as owner of the Equipment, you hereby grant a security interest to TracPlus in Equipment leased to you and located in New Zealand. You:
- (a) will do all things that TracPlus reasonably requires to ensure TracPlus has a perfected security interest in all Equipment;
 - (b) will reimburse TracPlus for all costs and/or expenses incurred or payable by TracPlus in relation to registering, maintaining or releasing any financing statement in respect of any security interest under this Agreement; and
 - (c) waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest.
- 8.7 If the Equipment leased to you is located out of NZ you agree to supply us with any additional details reasonably necessary for us to register our security interest in the Equipment in that jurisdiction with your assistance and at your expense.
- 8.8 During the Term you must pay all Equipment Lease Fees in accordance with clause 14.
- 8.9 The lease of the Equipment is for the Term. Upon expiry of the Term you must return the Equipment to us at the redelivery location notified by us. The Equipment must be returned in the same condition as the Equipment was delivered, subject only to fair wear and tear (“Redelivery Condition”). If the Equipment is not returned in the Redelivery Condition (as determined by us, acting reasonably), we may:
- (a) charge you for the repair of such Equipment to return it to the Redelivery Condition, together with any interest and other costs incurred by us as invoiced to you; or
 - (b) charge you for the replacement of the relevant Equipment, if such equipment is not able to be easily repaired, together with any interest and other costs incurred by us as invoiced to you.
- 8.10 Without limiting any other right or remedy available to us under this Agreement or at law, where any Fees (including but not limited to Equipment Lease Fees) or any other amount are outstanding, or you fail to return the Equipment in accordance with this Agreement, you agree that we may enter upon your (or any other) premises where the Equipment is situated and take possession of and/or remove such Equipment without being responsible for any damage caused.

9. COMMENCEMENT DATE, TERM AND TERMINATION

- 9.1 This Agreement commences on the Commencement Date (as specified in the Contract Details) and continues in force until expiry of the Term or termination in accordance with the terms of this Agreement.
- 9.2 If you wish to extend the operation of this Agreement beyond expiry of any Minimum Period you must notify us not less than 30 days before the end of that Minimum Period. We may in our discretion agree to the continued provision of the TracPlus Service in which case the Term will be extended on a month to month basis or for a further fixed period, in our discretion.
- 9.3 Either of us may terminate this Agreement as follows:
- (a) By giving the other 30 days’ notice in writing at any time (subject to clause 9.4 below);
 - (b) Immediately by notice in writing if the other party breaches any of its obligations under this Agreement and fails to remedy the breach within 14 days after receiving notice requiring it to be remedied including where you fail to pay amounts due within the time prescribed in a reminder notice given by us; or
 - (c) Immediately by notice in writing if the other party becomes bankrupt, is put into liquidation or has a receiver, voluntary administrator or statutory manager appointed over any of its assets (or similar) or becomes insolvent or ceases to carry on its business or otherwise makes any composition or arrangement with its creditors (or similar).
- 9.4 Subject to clauses 14.5 and 16.5, if the Agreement is for a Minimum Period and you terminate before the expiry of the Minimum Period you must pay us an early termination fee equal to 50% of all Fees that would have otherwise been payable until the expiry of the Minimum Period. You acknowledge that this early termination fee represents a genuine pre-estimate of the loss that we will suffer should you terminate this Agreement without cause prior to the end of the expiry of the Minimum Period and is not a penalty.
- 9.5 You may not request us to suspend the TracPlus Services during the Minimum Period.
- 9.6 If any amounts due and payable by you to us or to anyone else involved in providing any part of the

TRACPLUS SERVICE TERMS AND CONDITIONS

TracPlus Service to you remains unpaid we may immediately and without further notice disable or suspend your ability to use the TracPlus Service pending payment or remedy.

- 9.7 Termination or expiry of this Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.

10. On termination or expiry of this Agreement:

- 10.1 you must either return or destroy all documentation related to the TracPlus Service;
- 10.2 you must return the Equipment in accordance with clause 8.9;
- 10.3 you must immediately cease using any Software we provided you and you must delete it and all copies of it from any system or machine or other media that you use or have installed it on or stored any copies of it on;
- 10.4 pay all Fees for your use of the TracPlus Service or any part of it provided, prior to that termination, plus any early termination fee payable under clause 9.4; and
- 10.5 where any Fees (including but not limited to Equipment Lease Fees) or any other amount are outstanding, or you fail to return the Equipment, clause 8.10 shall apply;
- 10.6 if requested by you within six months of the date of expiry or termination of this Agreement, we may transfer copies of your Customer Data from our server(s) to you in the standard format at the time which we usually transfer such data provided that:
 - (a) you pay the Fee notified by TracPlus for undertaking any such transfer; and
 - (b) you have paid all sums due to us under this Agreement.
- 10.7 Following this six-month period, your Customer Data may have been deleted from our systems and may no longer be available for transfer under clause 10.6 We do not warrant that the format of the Customer Data we transfer to you will be compatible with any software.
- 10.8 We will retain your Customer Data on our systems for such period as is necessary to comply with any law, rule or regulation in New Zealand or overseas, and as we reasonably believe is necessary to assist in the investigation, detection and/or prevention of fraud, money laundering or other criminal offences or investigations undertaken by Government authorities (such as crash investigations).
- 10.9 Without limiting any other right or remedy available to us, we may restrict or suspend your access to the TracPlus Service or any part of it and/or delete, edit or remove the relevant Customer Data if we consider that you (including any of your Personnel) has:
 - (a) undermined, or attempted to undermine, the security or integrity of any part of the TracPlus Service;
 - (b) used, or attempted to use, any part of TracPlus Service:
 - i. for improper purposes; or
 - ii. in a manner, other than for normal operational purposes, that materially reduces the

operational performance of any part of the TracPlus Service;

- (c) transmitted, inputted or stored any Customer Data that breaches or may breach this Agreement or any third party right (including Intellectual Property Rights and privacy rights) or any applicable law (including any Data Privacy Law), or that is or may be Objectionable, incorrect or misleading; or
- (d) otherwise materially breaches this Agreement.

11. OWNERSHIP AND RESTRICTIONS; CONFIDENTIAL INFORMATION

- 11.1 You understand that the Intellectual Property Rights belong to us or to third parties who provide such equipment or services to us, and you will not assert or dispute ownership in them. Your only rights in and to any Intellectual Property Rights are as expressly provided for in this Agreement.
- 11.2 You must use the TracPlus Service as directed by us from time to time. Your right to use it is non-exclusive, and non-transferable. You must not:
 - (a) attempt to bypass any security mechanism in place on any system we use to make the TracPlus Solution available to you or in the TracPlus Solution itself;
 - (b) gain or attempt to gain unauthorised access to the TracPlus Service, our systems, or any other customers' systems, information or data; or
 - (c) resell or sublicense the TracPlus Service or any part of it.
- 11.3 For the avoidance of doubt, the provisions of this Agreement do not prohibit you from leasing to or allowing a third party to use a vehicle of any kind that includes or has affixed to it any Equipment for your use of the TracPlus Solution. You agree that you will remain personally bound by this Agreement in the event you lease such a vehicle including any Equipment to a third party, and any act or omission of such third-party lessee in connection with the Equipment shall be deemed an act or omission of you under this Agreement.
- 11.4 Access to the TracPlus Service is by way of email, usercode and/or password. You are responsible for the use and safekeeping of user codes allocated to you and all associated passwords. You are responsible for all use or access of TracPlus by anyone using your user codes, and for payment of Fees arising from that use. You must change your password if we request you to do so, and we may change any of your user codes at any time if we elect to do so. You must contact us immediately if you suspect any unauthorised use or disclosure of any passwords or if you would like any user codes changed. We may charge you a reasonable Fee for change of user codes.
- 11.5 You are responsible for all use of the Equipment associated with your (and your Personnel's) access to the TracPlus Service and for payment of all Fees associated with use of the Equipment and data generated by them.
- 11.6 You must not attempt to make any copy of the TracPlus Service or any part of it except as we explicitly authorise as part of this Agreement or elsewhere in writing. You must not share your access

TRACPLUS SERVICE TERMS AND CONDITIONS

(including without limitation the passwords you use to access) to the TracPlus Service with any third party, except with our prior consent. You must tell us immediately if you become aware of any circumstances that cause you to believe any person may have unauthorised knowledge, possession or use of the TracPlus Service or any part of it.

- 11.7 In relation to all Equipment, you agree that you will not:
- (a) copy, modify, alter, translate, vary, decompile, disassemble or re-assemble it in any way; and
 - (b) use it for any other purpose other than in conjunction with your use of the TracPlus Solution, or use it to resell or otherwise provide the TracPlus Service or any part of it in any way to any third party (subject to clause 11.3).
- 11.8 We acknowledge that the Customer Data uploaded from your use of the TracPlus Solution is your confidential information. We will not knowingly disclose such information other than as required to perform the TracPlus Services, unless the information is already in the public domain, we reasonably believe we are required to do so by law (this may include for example if anyone has a warrant to access any of the Customer Data) or such disclosure is to persons that are otherwise bound by obligations of confidentiality.
- 11.9 If you have given consent or permission (including by way of your use of any sharing functionality within the TracPlus Solution) for your Customer Data to be made available to (or comingled with) any third party (including other users of the TracPlus Service), a third party website or gateway service, you acknowledge that we have no responsibility for (or liability to you in connection with) the use of your Customer Data by such third parties (in its original or comingled form), or via such a website or service by visitors or users thereof. If you are using the TracPlus Service as part of a publicly hosted site, you acknowledge that your Customer Data is publicly available, and that we have no responsibility for the use the public make of such data.
- 11.10 You authorise us to disclose your Customer Data to the police, government agencies in NZ or overseas where we reasonably believe that the disclosure will assist us to comply with any law, rules or regulations in NZ or overseas or will assist in the investigation, detection and/or prevention of fraud, money laundering or other criminal offences.
- 11.11 If, in connection with the TracPlus Service, you gain access to the data of another user of the service, you will only use such data for the purpose for which that data was provided, and otherwise strictly in accordance with the Privacy Policy and all applicable laws.
- 11.12 You will not make media or other public statements about your use of the TracPlus Service without our prior written consent.

12. DATA

- 12.1 You acknowledge that:
- (a) we may require access to the Customer Data to exercise our rights and perform our obligations under this Agreement (including as specified in

the Privacy Policy) and otherwise comply with all applicable laws; and

- (b) to the extent that it is necessary but subject to clause 11.8, we may authorise a member or members of our Personnel or a third party to access the Customer Data for these purposes.
- (c) You must arrange all consents and approvals that are necessary for us to access the Customer Data as described in clause 12.1a. and 12.1b.

13. LIMITATION OF LIABILITY

- 13.1 We will not be liable to you, whether in tort, contract or otherwise, for any indirect loss of any kind (including special, incidental, consequential or punitive damages) or for any direct or indirect loss of profits, loss of use, loss of data, loss of anticipated savings, loss of goodwill, however caused, arising out of or in connection with your use of the TracPlus Service or entry into this Agreement.
- 13.2 To the fullest extent permitted by law, our liability to you arising out of all claims for damages under this Agreement
- (a) will not exceed 50% of the Fees paid by you and attributable to the TracPlus Solution (excluding device fees, airtime and other third party charges) during the year preceding the date of your claim, but limited in aggregate to 100% of the Fees in any one year.
- 13.3 We are not in default or liable to you by reason of any failure or delay in performing our obligations under this Agreement caused by any act or omission by you or any of your Personnel or by any act or event beyond our reasonable control. In the event of such an event, we will use reasonable commercial endeavours to resume our obligations under this Agreement as soon as reasonably practicable. Without limitation, the technology that is used to provide the TracPlus Solution may be subject to intermittent outages outside our reasonable control; such as weather conditions or failure of third party networks or equipment.
- 13.4 All claims by you under this Agreement must be made within 12 months of the cause of action arising, otherwise we shall have no liability to you (or any of your Personnel) in respect of such claim.

14. FEES AND PAYMENTS

- 14.1 You agree to pay our Fees plus GST or other applicable State and/or Federal taxes and/or fees (if any) for TracPlus Services and for any ancillary services. You agree to keep us informed of your correct country of tax residency and to advise us immediately of any changes to your tax residency status.
- 14.2 Unless specified otherwise, Fees shall be payable in advance (at the commencement of each billing period), with any adjustments required to reflect actual use of the Tracplus Service during the relevant billing period, to be invoiced (or credited, if applicable) in arrears.
- 14.3 We may (in our sole discretion) require a security deposit for the Equipment of a value determined by us (up to 25%) to be paid in full prior to delivery of the

TRACPLUS SERVICE TERMS AND CONDITIONS

Equipment to you. The security deposit shall not be set off against any Fees, but instead shall be refunded to you at the end of the Term, less any amounts that we incur in returning the Equipment to the Redelivery Condition (pursuant to clause 8.9).

- 14.4 Unless specified otherwise, our Fees are calculated in US dollars and converted to your nominated billing currency. If you wish to change your nominated billing currency you must inform us in writing no later than 7 days before the end of the current billing period, otherwise such notification will be effective from the next billing period. We will clearly identify the currency used in all calculations and the exchange rate used, including the source of the exchange rate.
- 14.5 If you are signed up to a Minimum Period, we reserve the right to increase the Fees from time to time to reflect any new, enhanced, or updated Software functionality made available to you as part of the TracPlus Solution. Any such change to the Fees takes effect 30 days from the date we notify you of them. If you do not wish to pay the increased Fees, you may terminate this Agreement on no less than 10 days' notice, provided the notice is received by us before the effective date of the Fee increase (and subject to clause 9.4 where the Agreement is for a Minimum Period). If you do not terminate this Agreement in accordance with this clause, you are deemed to have accepted the increased Fees.
- 14.6 We will send you invoices setting out our Fees. You must pay us in full and without deduction or set off within 14 days of the date of invoice.
- 14.7 If we provide services such as implementation or training for you, we will tell you how much those services will cost, and you must pay us our charges for them, plus goods and services tax and/or other applicable State and/or Federal taxes (if any).
- 14.8 If any duties including shipping, import duties, taxes, or other levies ("Duties") are imposed in relation to the provision of TracPlus Services or on any Equipment or ancillary services we provide to you, you must either pay those Duties or, where such Duties have been met by us, pay us those Duties in addition to the Fees. We will send you a bill for any such Duties.
- 14.9 If you elect to pay our charges by bank draft, transfer, credit card, debit card or by such means where fees or commissions may be charged by any third party or parties, we reserve the right to recover all such fees or commissions from you.
- 14.10 If you do not pay an invoice or bill by the due date for payment, we may charge you interest on the unpaid amount from the due date for payment until the date you pay it; the interest rate will be 2% per month.
- 14.11 If your invoice remains unpaid after the due date for payment, we will send a reminder to your nominated billing contact. If your invoice still remains unpaid 30 days after the reminder notice is sent, then without prejudice to our ability to suspend provision of services, we may at our sole discretion:
- withdraw the provision of TracPlus Services, including but not limited to tracking and communication services, at any time thereafter by giving final written notice not less than 24 hours prior to the time of withdrawal of services; and
 - enter upon your (or any other) premises where the Equipment is situated and take possession of and/or remove such Equipment without being responsible for any damage caused.
- 14.12 If we agree, at our absolute discretion, to re-supply or continue to supply TracPlus Services, including but not limited to tracking and communication services, we may, in addition to any other rights or remedies we may have, require either full payment of all outstanding monies owing to us, or agreement on a payment arrangement satisfactory to us (which may include prepayment or security), prior to any such re-supply or continuation of supply.
- 14.13 We may use Personal Information you provide to us for the purposes of collecting any money owed by you and to obtain a credit report about you from time to time, or to appoint a debt collection agency if required. The "credit information" gathered by the "credit reporter" (as each of those terms are defined in the Credit Reporting Privacy Code 2020 (NZ)) may be used by that credit reporter to generate subsequent credit reports and be given to their other customers for the purposes of procuring credit reporting services. If you default on any obligation then information about the default may (without prejudice to any other remedies) be provided to credit reporters.
- 14.14 You agree to indemnify us against any claims, damages, and losses (including costs) suffered or incurred by us as a result of your breach of any term of this Agreement, including but not limited to any breach of clause 8 (ownership of leased Equipment), clause 11 (IP ownership and rights) and clause 12 (data rights).

15. DISPUTES

- 15.1 If a dispute arises out of this Agreement, a party may not commence court or arbitration proceedings unless it has complied with the remainder of this clause.
- 15.2 A party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute. On receipt of that notice, the parties will use all reasonable endeavours to resolve the dispute by way of good faith discussion, consultation, negotiation or other informal means, using Personnel of appropriate seniority within each party's organisation.
- 15.3 If the dispute is not resolved within 15 business days of notice being given, either party may commence proceedings against the other party in New Zealand by way of court action.
- 15.4 Nothing in this clause prevents a party seeking urgent interlocutory relief.

16. GENERAL

- 16.1 We may give you notice by email, post or by fax to the address you gave us when you registered. Any communication by email or fax is deemed to be received when transmitted to the correct email or fax address of the recipient. Communication in writing is deemed to be received 3 days after posting, or when left at the specified address.

TRACPLUS SERVICE TERMS AND CONDITIONS

- 16.2 NEW ZEALAND LAW GOVERNS THIS AGREEMENT. NEW ZEALAND COURTS HAVE NON- EXCLUSIVE JURISDICTION OVER THIS AGREEMENT. IF YOU WISH TO BRING A CLAIM AGAINST US, YOU MUST DO SO IN A NEW ZEALAND COURT. WE MAY AT OUR OPTION BRING PROCEEDINGS IN ANY OTHER COURT INCLUDING ANY COURT IN THE COUNTRY OF YOUR DOMICILE OR THE LOCATION OF THE EQUIPMENT.
- 16.3 This Agreement constitutes the entire agreement between us in relation to the TracPlus Service. You acknowledge that you have received a copy of these Service Terms and in particular that your Agreement with TracPlus constitutes a “security agreement” for the purposes of the Personal Properties Securities Act 1999, and that TracPlus may register a financing statement.
- 16.4 We may change this Agreement from time to time by giving you notice of the change by email or by posting a notice on our Website. Changes are effective from the date we notify you that they apply from. You are responsible for ensuring you are familiar with the latest Agreement. By continuing to access and use the TracPlus Service or any part of it from the date on which this Agreement is changed, you agree to be bound by the changed Agreement.
- 16.5 If a change to this Agreement has a materially adverse effect on you, you may terminate this Agreement on no less than 10 days’ notice, provided you give such notice within 30 days of the date we notify you of the change. If you do not terminate this Agreement in accordance with this clause, you are deemed to have accepted the changed Agreement. If you terminate this Agreement in accordance with this clause 16.5, you will not be required to pay the applicable early termination fee (if any). In any other case, if you terminate during any Minimum Period, clause 9.4 will apply. The termination right set out in this clause 16.5 does not apply where, in our reasonable opinion, the change to this Agreement is required to give effect to, or as a result of, a change in law.
- 16.6 You may not assign or transfer this Agreement, or your access or use of the TracPlus Service or any part of it, or any of your other rights and obligations under this Agreement without our prior written consent. We may transfer our rights and obligations under this Agreement on giving notice in writing to you and, for clarity, a change in control of TracPlus (including any transfer of shares or other arrangement affecting TracPlus which results in a change in the effective control of TracPlus) will not constitute an assignment or transfer by TracPlus for the purposes of this Agreement.
- 16.7 The provisions of clauses 7.7, 8, 9, 11, 13 will survive termination or expiry of this Agreement.
- 16.8 If any provision of this Agreement is invalid or unenforceable the remaining provisions of this Agreement are not affected and continue in full force.
- 16.9 Any unlawful provision in this Agreement may be severed, and the remaining provisions remain enforceable.
- 16.10 The word “including” or “for example” or any examples given in this Agreement do not have a limiting effect.
- 16.11 No delay or failure to act is a waiver of any other or any subsequent breach. The failure of a party to enforce a provision of this Agreement is not to be interpreted as a waiver of that provision. No waiver is effective unless it is in writing.
- 16.12 The singular includes the plural and vice versa.
- 16.13 If the customer comprises more than one person, the liability of such persons shall be joint and several.
- 16.14 We will not be liable for any act, omission, or failure to fulfil our obligations under this Agreement if such act, omission or failure arises from any cause reasonably beyond our reasonable control including strikes, lockouts, riots, acts of war or terrorism, epidemics, pandemics, government action superimposed after the date of this Agreement, fire, communication line failures, power failures, earthquakes or other disasters (“Force Majeure”). If we are unable to fulfil our obligations due to a Force Majeure we shall immediately notify you in writing and provide full information concerning the Force Majeure event including an estimate of the time likely to be required to overcome the event, use feasible commercial endeavours to overcome the event and minimise the loss to you and continue to perform our obligations as far as practicable.

17. PRIVACY

- 17.1 We collect and process Personal Information of your Personnel and any other persons who access or use the Website or TracPlus Service in connection with our provision of the TracPlus Service (each a “User”) when you (or your Users, as applicable) access or use the Website and/or the TracPlus Service. In order to provide you with the TracPlus Service (and improve on it), we may also collect certain information about the performance of the Website and any part of the TracPlus Service and your (and your Users) use of the Website and/or the TracPlus Service.
- 17.2 Our access to and use of all such Personal Information is governed by our Privacy Policy. However, you acknowledge that information transmitted over the internet is inherently insecure.
- 17.3 By agreeing to this Agreement, you also agree that we reserve the right to collect, compile, synthesise, and analyse information and data on how the TracPlus Service is used by you and your Users and reserve the right to sell, disclose to or share such information and data with third parties in an anonymous and aggregated form at our discretion (“Aggregate Data”). In no event will any such Aggregate Data personally identify you or any of your Users. To the extent that any Aggregate Data is collected by TracPlus, it will be solely owned by TracPlus and may be used by TracPlus, for any lawful purpose, provided that TracPlus agrees to comply with all Data Privacy Laws in connection with the dissemination and use of such Aggregate Data.
- 17.4 You must comply with our Privacy Policy and all Data Privacy Laws in connection with your collection and use of any Personal Information of any person.

TRACPLUS SERVICE TERMS AND CONDITIONS

You will not (and will ensure your Users do not) use the TracPlus Service: (i) to collect personal information about third parties (other than as anticipated by this Agreement), including without limitation, e-mail addresses; or (ii) in a way that violates (or may be considered inconsistent with) the privacy, rights or civil liberties of any person (including in a way that prevents the exercise of them).

- 17.5 You warrant that you have obtained all necessary consents and approvals from all Users to ensure that we are able to lawfully process all Personal Information of such persons in the manner anticipated by this Agreement and otherwise as required by law.

18. ANTI-SPAM POLICY

- 18.1 We comply with the Unsolicited Electronic Messages Act 2007 (NZ). We will not send you unsolicited information without your consent nor shall we assist anyone else to.
- 18.2 You may choose whether to receive promotional messages from us by notifying us in writing or by email, or by any other electronic means that we may choose to offer you.
- 18.3 Emails regarding service availability or issues relating to your ability to use our services will be sent to the email address advised by you during the registration process. You agree that such emails are not considered to be unsolicited under the terms of the above Act.

19. REGISTERED TRADEMARKS, COPYRIGHT NOTICES AND CREDITS

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- 19.5 LIMA Maps are courtesy of the Landsat Image Mosaic of Antarctica (LIMA) Project.
- 19.6 HERE Maps are provided under contract by HERE Maps, Inc.

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- Land Information New Zealand
 - The United States Geological Survey
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 - The National Geophysical Data Centre
 - David Graves
 - The Consultative Group on International Agricultural Research
 - geonames.org
 - SkyVector.com
 - GeoBase
 - Openstreetmap.org
 - HERE Maps
- 20.2 This Agreement is intended to convey a benefit to the parties and be enforceable by each of them and any related parties of ours (where relevant) under the Contract and Commercial Law Act 2017 (NZ).